that its duty is to its immediate employer only. *Davis* v. *Spurling* (1829) 1 R. & M. 64; *Aubery* v. *Fiske* (1867) 36 N. Y. 47.

It is sounder on principle, however, to hold that by a deposit the fund loses its trust character, the transaction amounting to a loan and the res being converted into a claim against the bank which the trustee now holds in trust, 2 COLUMBIA LAW REVIEW 550. Adopting this view, the bank could not be held as constructive trustee, either where it pays the money over at the trustee's order, or where it cancels the obligation to the trust estate with its claim against the trustee individually, for in neither case does the bank get title to the trust res, the effect of the transaction being to extinguish its obligation to the trustee. It remains to fix the liability, if any, on some other ground. The result may be different where the bank meets checks drawn by the trustee in favor of third parties, and thereby fulfills its legal obligation as depositary, from that in the case where it avails itself of a claim against the trustee personally to extinguish its obligation to the trust estate or, in some other way, benefits by the transaction. In the former case, analogous to the case of the bailee, it would seem that the legal relations should govern. The bank not being permitted to make itself a party to an inquiry between its customer and third persons, as suggested by Lord WESTBURY in a dictum in *Gray* v. *Johnston* (1868) L. R. 3 H. L. 1; *Thomassen* v. *Van Wyngaarden* (1885) 65 Iowa 687; *Boone* v. *Bank* (1881) 84 N. Y. 83. Where the bank, however, benefits by the transaction at the cestui's expense, a court of equity will examine into the fraud and consider the whole transaction voidable, declaring the debt of the bank still existing in favor of the trust estate. *Pannel* v. *Hurley* (1845) 2 Coll. Ch. Cas. 241. And it seems to be this last situation which is referred to when the general statement is made that in cases of fraud and collusion, the agent of the trustee is answerable directly to the cestui.

Such being the result of the decisions, it is obvious that the interests of the cestui can be adequately protected without resorting to the fiction that the fund retains its trust character. For the only situation in which the cestui would get any higher rights than by applying the above rules, would be where the bank becomes insolvent and the cestui seeks to prove ahead of the other creditors. In this instance, however, it is difficult to see the justice in preferring a trust account, where, as a matter of fact, it is a loan the same as any other deposit. The principal case, then, seems unsound in holding that the fund retained its trust character, and that the bank was liable for meeting checks in favor of third parties in fulfilment of its legal obligation; but the court found correctly that the obligation of the bank on the trust account still remained in respect to that amount which it sought to extinguish by its discharge of the trustee's personal debt.

A ST. LOUIS BRIBERY CASE.—A case arising out of the recent St. Louis municipal scandals brings up the question of what are

the necessary elements to constitute the crime of attempted bribery. The defendant Butler was indicted under a statute, which defines the crime as offering money to a public officer with intent to influence his decision "on any matter which may be then pending, or which may by law be brought before him in his official capacity," §§ 2084 & 2088, Rev. Stat. 1899. The City Council passed an ordinance directing the Board of Health to enter into a contract for the removal of the city's garbage. Before the contract had been awarded the defendant approached one Chapman, a member of the Board, and offered him a bribe to vote in favor of awarding the contract to a certain company. The court held that the defendant was not guilty as the ordinance requiring the Board to act was illegal and void, and therefore the matter could not legally come before Chapman in his official capacity. *State* v. *Butler* (Mo. 1903) 77 S. W. 560.

Coke defines bribery to be "where any man in judicial place" receives any reward "of any person, that hath to do before him any way, for doing his office, or by color of his office." 3 Co. Inst. 145. The crime was subsequently extended to include similar action by all those occupying governmental positions, and exercising governmental powers. 1 Russell on Crimes 222. The purpose in creating the crime of bribery being to prevent official corruption, it was also held that an attempt to bribe, though unsuccessful, was criminal. *Rex* v. *Vaughan* (1769) 4 Burr. 2494. The gist of the common law offense is the offering of any reward to a public officer, legislative, executive or judicial for the purpose of corrupting his official action, official action including all actions done by him in his official capacity and under color of his office, whether they are such as the law requires him to perform or are done in excess of his authority. That the result of the act will be null and void is immaterial. *State* v. *Ellis* (1868) 33 N. J. L. 102. On the other hand it is clear that the crime will not be committed if the act desired is a personal as distinguished from an official one. In Re *Yee Gee* (D. C. 1897) 83 Fed. 145; *U. S.* v. *Gibson* (D. C. 1891) 47 Fed. 833. Applying these rules to the principal case the soundness of the decision must rest on whether or not the ordinance could be attacked in this action. If it could be and was found to be illegal the act would be outside the scope of the official duties of the officer and as there was no intimation in the case that a usurpation of authority was intended, no crime would have been committed. If the opposite conclusion is reached it seems equally clear that all the elements of the crime would be present. Viewing the case in this light the same result should be reached at common law and under the statute. In the case of de facto officers the better rule seems to be that their title to office cannot be attacked in an action for bribery. *State* v. *Gardner* (1896) 54 O. St. 24. It is true that this case can be distinguished from the one under discussion as a title to office can be directly attacked by quo warranto while, New Jersey excepted, no writ cannot be used to attack legislative acts. The reasoning of the courts however does not rest on this distinc-

tion, and is equally applicable whether the ground of attack is the authority of the officer to act at all or in the given instance. The vital point is not the broad question whether such an ordinance can be attacked collaterally, but whether it can be attacked in this case. It is admitted and is undoubtedly law that the mere fact that the act if performed would be null and void is no defense. It is also admitted that had the offer come from the officer the question of the illegality of the ordinance could not be raised. It is difficult to see why the same reasoning should not be applied when the offer comes from a third person. The same elements are necessary to make up the crime in either case, the same moral turpitude and tendency toward official corruption. The authorities on the point are in conflict. *Moore* v. *State* (Tex. 1902) 69 S. W. 521; *State* v. *Ellis*, supra; *State* v. *Potts* (1889) 78 Ia. 656; In Re *Bozeman* (1889) 42 Kan. 451.

The court treats the case as if the act in which the defendant sought to influence Chapman was not in a matter "then pending" but in a matter "which might by law be brought before him." If the act came under the former clause then there would be nothing in the statute even under the principle of strict construction, upon which the Court lays such emphasis, to take the case out of the common law rule. The facts of the case seem to favor this interpretation. The Board of Health had advertised for and received bids for the contract and the offer was made only a day before the contract was awarded to the defendant's company.

AMOUNT IN CONTROVERSY AS LIMITING JURISDICTION.—The general use of the expression "amount in controversy" in statutes limiting the jurisdiction of courts often presents an interesting question of construction as to how that amount is to be determined. The general rule for its determination is that the sum demanded in the complaint prima facie represents the amount in controversy, but that the court may keep an eye on the record and evidence to see whether such amount be alleged in good faith. *Hilton* v. *Dickinson* (1883) 108 U. S. 165; *Less* v. *English* (C. C. A. 8th Circ., 1898) 85 Fed. Rep. 471, 474. Where property is the matter in dispute or claims for liquidated damages are sought to be enforced, little difficulty, arises as the real sum or value appears, but in cases of torts greater indulgence is allowed owing to the unliquidated nature of the damages. *Barry* v. *Edmunds* (1886) 116 U. S. 550.

If the amount be alleged merely to get the suit within a certain jurisdiction the court will dismiss it and this irrespective of what stage the case has reached when the bad faith is discovered. But the mere fact that the plaintiff recovers less than the amount set by statute does not show bad faith or divest the court of jurisdiction. If good faith be used the courts generally seem to draw no distinction between cases where the full amount claimed in the complaint is not recovered because the plaintiff fails to establish his facts and where he fails because his claim is unsound in